

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)**

MANUFACTURERS AND TRADERS)	
TRUST COMPANY,)	
)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 8:16-cv-03346-GJH
)	
DEL CONCA USA, INC., et al.,)	
)	
)	
<i>Defendants.</i>)	
_____)	

**MOTION FOR ENTRY OF AN ORDER OF INTERPLEADER
AND OTHER RELATED RELIEF**

Interpleader Plaintiff, Manufacturers and Traders Trust Company (“M&T”), by and through its undersigned counsel, moves, pursuant to 28 U.S.C. § 1335, for the entry of an Order of Interpleader with respect to the funds that are the subject of this statutory interpleader action and other related relief, and in support thereof states as follows:

1. M&T commenced the instant statutory interpleader action to determine which of the two interpleader defendants—Del Conca USA, Inc. (“Del Conca”) and Nathaniel L. Akers (“Akers”)—is entitled to \$302,662.69 (the “Funds”) that is currently being held in an M&T business checking account (the “Account”) titled in the name of Akers
2. The Funds represent the proceeds of a wire transfer (the “Wire Transfer”) that that was initiated by Del Conca and received by M&T with instructions to credit the Funds to the Account.

3. Shortly after M&T credited the Funds to the Account, a representative of Del Conca advised M&T that the Wire Transfer had been fraudulently procured and requested that the Funds be returned to Del Conca.

4. Based upon Del Conca's allegation of fraud and claim to the Funds, M&T, in accordance with its contractual and legal rights with respect to the Account, froze the Funds in the Account.

5. Thereafter, M&T attempted, without success, to contact Akers to determine whether he disputed Del Conca's claim to the Funds.

6. M&T is contractually and legally obligated to maintain funds that are transferred to a customer's business checking account for the benefit of its customer. Without receiving the consent of Akers, M&T cannot return the Funds to Del Conca without exposing itself to potential liability to its customer, Akers.

7. Del Conca has filed suit against M&T in the Supreme Court of New York, Case Number 655166/2016 (the "New York State Court Action"), claiming that M&T is wrongfully holding the Funds.

8. Because of the conflicting claims to the Funds, M&T commenced this statutory interpleader action to obtain a judicial determination as to whether Del Conca or Akers is entitled to the Funds.

9. M&T, as a disinterested stakeholder of the funds to which competing claims have or may be made, is entitled to interpleader relief.

10. Moreover, as a disinterested stakeholder who commenced this action in good faith, M&T is also entitled to recover its reasonable attorneys' fees and litigation expenses from the interpleaded funds. As of the date of this Motion, M&T has incurred legal fees and expenses

in connection with this matter totaling \$18,783.89. Until an Order of Interpleader has been entered and M&T has been released from this case, M&T will continue to incur attorneys' fees and costs in connection with this matter.

11. Assuming that Del Conca and Akers do not object to this Motion and the attorneys' fees and expenses requested therein by M&T, and that the Motion is granted and M&T is promptly dismissed from this case, M&T is willing, as an accommodation to the parties and the Court, to cap its request for attorneys' fees and expenses at \$18,000.00.

12. Accordingly, for the reasons stated herein as well as those more particularly set forth in the accompanying memorandum of law, this Court, pursuant to 28 U.S.C. § 1335, should enter an Order: (a) dismissing M&T from this action; (b) requiring Del Conca and Akers to interplead as to the Funds; (c) discharging M&T from any further liability with respect to the Funds; (d) enjoining Del Conca and Akers from pursuing any action or proceeding against M&T related to the Funds, including, but not limited to, the New York State Court Action; (e) awarding M&T attorneys' fees and expenses in the amount of \$18,000.00; and (f) authorizing M&T to deposit the Funds with the clerk, less the amount of reasonable attorneys' fees awarded by the Court to M&T.

13. In support of this Motion, M&T submits the following exhibits:

- A. Affidavit of Kenneth Krach in Support of the Motion;
- B. Complaint Filed by Del Conca against M&T in the New York State Court Action;
- C. Gebhardt & Smith LLP's billing records for the above-captioned case; and
- D. Affidavit of James T. Heidelberg, Esq. in Support of the Motion.

WHEREFORE, M&T requests that this Honorable Court enter an Order of Interpleader that:

- A. Authorizes M&T to pay the Funds into the Registry of the Court, less the amount of reasonable attorneys' fees awarded by the Court to M&T;
- B. Requires the Defendants to interplead as to the Funds, naming Del Conca as Plaintiff and Akers as Defendant;
- C. Dismisses M&T from this action and discharges M&T from any liability to the Defendants with respect to the Funds and this action;
- D. Restrains and enjoins the Defendants from instituting or prosecuting any action in any state or federal court, including but not limited to the New York State Court Action, against M&T with respect to the Funds;
- E. Awards to M&T attorneys' fees and expenses incurred by M&T in the amount of \$18,000.00 in connection with the dispute regarding the Funds and the filing of this action; and
- F. Grants M&T such other relief as may be just and proper.

Respectfully submitted,

Dated: February 10, 2017

/s/ James T. Heidelberg
James T. Heidelberg (Bar No. 07715)
Keith M. Lusby (Bar No. 05596)
Gebhardt & Smith LLP
One South Street, Suite 2200
Baltimore, Maryland 21202-3281
Telephone: (410) 752-5830
jheid@gebsmith.com
klusby@gebsmith.com

*Attorneys for Plaintiff, Manufacturers and Traders
Trust Company*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 10th day of February, 2017, I caused the foregoing Motion for Entry of Order of Interpleader, Memorandum in Support Thereof, and Proposed Order, to be filed via the Court's ECF system, which will provide electronic copies to:

John L. Hone, Esquire
Law Office of Lipshultz and Hone, Chtd.
8630 Fenton Street, Suite 108
Silver Spring, Maryland 20910
Counsel for Defendant, Del Conca USA, Inc.

In addition, I mailed copies of the foregoing papers to via first-class mail, postage prepaid, to counsel for Defendant, Del Conca USA, Inc., and to:

Nathaniel L. Akers
6501 Sheriff Road,
Hyattsville, Maryland 20785
And
5135 Marlboro Pike
Capital Heights, Maryland 20743
Defendant

James T. Heidelberg
James T. Heidelberg